JOHORE RERORT.

[APPELLATE CRIMINAL JURISDICTION]

COURT OF APPEAL.

McELWAINE, C.J. (S.S.), POYSER, C.J. (F.M.S.) & PEDLOW, J.

October 4, 1939.

LEE SEE CHIAN - - - Appellant

vs.

THE PUBLIC PROSECUTOR - Respondent.

[CRIMINAL APPEAL No. 7 of 1939]

Traction Engines and Motor Cars Enactment—Maximum weight of vehicles—Rule 54 (i)—Whether intra vires—rule making power—meaning of the expression "weight" when applied to motor lorries.

The appellant, the driver of a motor lorry, had been found guilty of contravening Rule 54 (i) of the general rules made under the Traction Engines and Motor Cars Enactment which limits the weight of a loaded vehicle to 4¾ tons. He appealed against the conviction on the ground that the rule was **ultra vires** the Enactment because the definition of the word "weight" in Section 2 of the Enactment, when applied to a traction engine, does not include the freight loaded into it.

Held, that the real purpose of the definition is to define gross weight by specifying matters for which deduction is not to be allowed, and that on its proper construction the expression "gross weight" must mean the whole, entire or total weight of which the load in the vehicle must form part.

Held further, that the rule is reasonable and necessary for the purposes of the Enactment and is, therefore, in any event, **intra vires** the rule making power.

Case referred to:—

(1) *R. v. Leong Ah Chan & Ors.,* (1935) S.S.L.R. 462; 5 M.L.J. 38.

MAGISTRATE'S APPEAL.

The facts and arguments sufficiently appear from the parts of the Magistrate's judgment set out hereunder.

Before the Magistrate.

Pearce Chief Police Officer for Public Prosecutor.
Goho for accused.

Weiss, First Magistrate.—The accused is the driver of a certain motor lorry registered in Singapore as S. 1534. On the 15th April 1939 he drove this lorry on a thoroughfare in Johore Bahru, and it was found that the total laden weight of the lorry was 5 tons, 13 cwt. 2 qrs.

Rule 54 (i) of the Traction Engines and Motor Car Rules, 1935, provides, *inter alia,* that the total weight of a loaded vehicle shall in no case exceed 4¾ tons. The accused is charged accordingly with having an excess load of 18 cwt. 2 qrs.

It is said that Rule 54, in so far as it may be applied to a motor lorry, is *ultra vires* the Traction Engines and Motor Cars Enactment.

The Rules, of which Rule 54 forms part, were made by His Highness the Sultan in Council in exercise of the powers conferred upon him by section 27 of the Enactment. Clause (XIV) of this section confers the power to make rules "to prescribe limits of size and weight for traction engines, motor cars and carriages....."

A motor lorry is a "traction engine" within the definition of a "traction engine" in Section 2 of the Enactment. Even if I entertained any doubt as to this, such doubt is removed by a decision on the point in *R. v. Leong Ah Chan and others*[1].

By the same Section the "weight" of a traction engine is defined: "to include the gross weight inclusive of the tare, the driver, and necessary attendants, and full supplies of fuel and water, or whatever sources of energy are employed in its propulsion." "Tare" is defined to mean "the actual weight when not loaded"

If it stood alone the definition of the "weight" of a traction engine might present no difficulty, but it is argued that the definition must be construed in the light of the ensuing definition of the "weight" of a carriage attached to a traction engine. This is defined "ton include the gross weight when loaded inclusive of the tare and freight".

It is argued that in the case of traction engines no mention is made of freight and that the omission of the words "when loaded" must have been deliberate.

I am not persuaded, however, that such indeed is the intention. It appears to me more probable that no reference is made to the loading of a traction engine because a traction engine *qua* traction engine does not carry freight, and that the fact that a "traction engine", by the language of its definition, includes a self propelled lorry escaped the notice of the draftsman.

For this reason I think that the argument proceeds from premises assumed without justification and that any assumption of a special intention in relation to lorries would therefore be quite unwarranted.

It is true that the expression "The gross weight inclusive of the tare etc." may appear in its literal sense to mean the combined weight of the tare etc., to the exclusion of everything not specifically mentioned, but this is certainly not a case where the language is so clear and explicit that effect must be given to it whatever the consequences may be.

It is a cardinal rule of interpretation that if one construction of words used in a statute should lead to a clear contradiction of the apparent purpose of the statute, some other construction should be sought.

To construe the words in question in such manner as to create a special immunity for motor lorries would, in my view, be palpably absurd and repugnant to the manifest purpose of the Enactment, and I hold accordingly that the words "inclusive of the tare etc." do not, by implication or otherwise, exclude the useful load.

It follows that the expression "any motor vehicle" in rule 54 (i) must include a motor lorry, and the plea that the rule, when applied to lorries, is *ultra vires* the Enactment, therefore fails.

I would add that I am not insensible to the principle, of which counsel for the defence took care to remind me, that Rules made under statutory powers enforceable by penalties must be construed strictly like other provisions encroaching on the ordinary rights of persons. In the first place I have endeavoured only to put the right interpretation upon the definition of a certain term, without regard to any indirect penal consequence such interpretation may have; and in the second place I do not regard the overloading of lorries as one of the ordinary rights of a citizen.

It follows, therefore, that the submission made on behalf of the defence cannot be accepted, and as the accused does not wish to give or call any evidence, a conviction must be recorded.

The accused appealed to the Supreme Court. When the appeal came on for hearing in the Court of the Judge, Mills J. directed that it be heard and determined by the Court of Appeal because it involved the determination of legal points pertaining to more than one jurisdiction.

Before the Court of Appeal.

Goho for Appellant.

Abdul Hamid, Deputy Public Prosecutor for Public Prosecutor.

McElwaine C. J., (S.S.).—The appellant was convicted on the following charge:

> That you, on or about 11 a.m. on 15.4.39 at Jalan Ibrahim, Johore Bahru drove motor lorry S. 1534 on public thoroughfare having an excess of 18 cwts. 2 qrs., beyond that allowed in Johore Bahru, and thereby you committed an offence under Rule 54 (i) punishable under section 28 Enactment 12.

Weight carried	5	tons.	13	cwts.	2	qrs.	00 lbs.
Allowed in J.B.	4	„	15	„	0	„	00 „
Excess of			18	cwts.	2	qrs.	00 lbs.

Mr. Goho's argument was that Rule 54 (i) of the rules made under the Traction Engines and Motor Cars Enactment is *ultra vires*. That Rule is as follows:

> "54 (i) The weight transmitted by any motor vehicle or carriage shall be such that the sum of the weights transmitted to the road by the wheels of any one axle shall not exceed 3½ tons provided that the total weight of the loaded vehicle does not exceed 4¾ tons. In certain restricted areas, set out in the twelfth schedule, the total weight transmitted to the road by the wheels of any one axle shall not exceed 2 tons provided that the total weight of the loaded vehicle does not exceed 2¾ tons.

His point was that "weight" in section 27 (xiv) has the same meaning as in section 2 (i) and that in section 2 (i) the words "weight of a traction engine" does not mean the total loaded weight.

The definition of "weight" is as follows:—

> "When the 'weight' of a traction engine, carriage or motor car is referred to, the expression includes, in the case of a traction engine, the gross weight inclusive of the tare, the driver, and necessary attendants, and full supplies of fuel and water, or whatever sources of energy are employed in its propulsion; in the case of a carriage attached to a traction engine, it includes the gross weight when loaded, inclusive of the tare and the freight; and in the case of a motor car, it includes the gross weight, inclusive of the tare and of its full complement of driver, attendants, passengers and freight, and full supplies of fuel and water, or whatever sources of energy are employed in its propulsion".

Mr. Goho's ingenious argument was based on a contrast between the expression "weight of a traction engine includes the gross weight inclusive of the tare, the driver, and necessary attendants, and full supplies of fuel and water" on the one hand, and the expression "weight of a motor car, includes the gross weight, inclusive of the tare and of its full complement of driver, attendants, passengers and freight, and full supplies of fuel and water" on the other hand.

"Freight", he points out, is not mentioned in the gross weight of a traction engine, and therefore, he argues, it is not intended to be included in the gross weight of that species of traction engine known as a lorry.

The real purpose of the definition is to define gross weight by specifying matters for which deduction is not to be allowed. Much of the definition appears to be unnecessary.

"Gross weight" means the whole, entire, total weight of the vehicle and when the words are used with the word "includes" something more than is specified is intended.

Mr. Goho contends that gross weight means weight less freight. If this were so, one would expect gross weight to be defined as meaning tare together with driver, attendants, fuel and water but from the way in which the definition is worded it obviously means more than this. Weight is defined as "including" not as "meaning".

If Mr. Goho's argument is correct, the startling result follows that His Highness in Executive Council has power to prescribe the weight of a lorry unladen but not its weight laden which would be extraordinary, seeing that the purpose of the Enactment and rules is to provide for public safety and to prevent damage to roads.

Even if "weight" has the restricted meaning which Mr. Goho attributes to it, it will be noticed that the rule making power is much wider than a mere prescribing of weights under section 27 (xiv). Subsection (v) allows His Highness in Council to prohibit the doing of any act which is likely to cause annoyance or damage, which would include driving, or permitting to be on the road, a lorry which was over laden. Subsection (xix) allows rules to be made generally to carry out the purposes of this Enactment.

In my opinion Rule 54 (i) is necessary for the carrying out of the purposes of the Enactment. It is a reasonable rule: it is not partial: it limits the weight of a loaded vehicle.

In my opinion the rule making power should be exercised to abate the mischief and to advance the remedy, and Rule 54 (i) is within the competence of His Highness in Council.

The appeal from the conviction is dismissed.

Poyser C. J., F.M.S.—I have read the judgment of the Chief Justice of the Straits Settlements, and I agree that the appeal should be dismissed.

It must be admitted that section 2 of the Enactment we are called on to interpret is not very clear, but I have no hesitation, for the reasons stated by the Magistrate, in rejecting Mr. Goho's ingenious argument, and holding that the gross weight of a traction engine includes freight. Even if that were not so, section 27 of the Enactment is very wide, and Rule 54 (i) is, in my opinion, clearly *intra vires.*

Pedlow, J.—I have read the judgments of the Chief Justice of the Straits Settlements and of the Chief Justice of the Federated Malay States, and I agree that the appeal should be dismissed.

I have not the slightest doubt that the "weight" of a traction engine as defined in section of the Traction Engines and Motor Cars Enactment (No. 12) includes the weight of the freight, and that Mr. Goho's argument for the appellant, whilst ingenious, was fundamentally unsound. To accept his contention would be to give the Enactment a nonsensical meaning.

I am of opinion that the sentence to a fine of $25 is a light one, but under the circumstances do not propose to enhance it. The use of heavily overladen lorries is, in my opinion, a source of grave danger to the public in that the lorry cannot brake with sufficient rapidity without fear of something in the mechanism snapping and it also imposes an unfair wear on roads not built to accommodate such weights.

I suggest that the prosecution should in such cases in future consider whether the owner of the lorry—the person who benefits by the overloading—should not also be charged, as well as the driver, with an offence.

Appeal dismissed.